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Supreme Court, U.S.
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No. _____

IN THE

SUPREME COURT of the UNITED STATES

LENNON ANDERSON,

Petitioner

v.

VANGUARD CAR RENTAL USA, INC.

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Lennon Anderson, pro-se

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QUESTIONS FOR REVIEW

1. Whether it is legal for an employer to set performance standards beyond human physical capabilities and then discharge an employee for not meeting those standards.
2. Whether doubt was created to prevent a dismissal under Federal Rules of Civil Procedure 12(b)(6).

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OPINION AND ORDERS BELOW

The Florida Southern District Court's Order dismissing the Second Amended Complaint is unpublished. Likewise, the Court's opinion of the Appeals Court of the Eleventh Circuit, including the order denying rehearing are also unpublished.

STATEMENT OF JURISDICTION

The Appellant's motion for rehearing in the Appeals Court of the Eleventh Circuit was denied on February 27, 2009. Pursuant to Supreme Court Rule 13.3, this Court has jurisdiction.

CONSTITUTIONAL AND STATUTARY PROVISIONS

The Thirteenth Amendment to the United States Constitution:

1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.
2. Congress shall have the power to enforce this article by appropriate legislation.

Section 1985(3). Depriving persons of rights or privileges

Section 1985(3) provides in relevant part: "If two or more persons in any state or territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; ... the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

STATEMENT OF THE CASE

On August 11, 2005, the original complaint was filed against the defendant. The complaint included six counts: (I) involuntary servitude under 18 U.S.C. §1584; (II) discharge without cause under 18 U.S.C. §1584; (III) depriving persons of rights or privileges under 42 U.S.C. §1985(3); (IV) peonage under 42 U.S.C. §1994; (V) equitable accounting under Florida law; and (VI) negligence under Florida law. The defendant filed a motion to dismiss pursuant to FRCP 12(b)(6), which the district court granted on January 10, 2006. The district court dismissed the case without prejudice and closed the case for administrative purposes pending plaintiff's filing of an amended complaint.

Plaintiff filed an amended complaint on January 9, 2007. The amended complaint included three counts: (I) Depriving persons of rights or privileges under 42 U.S.C. §1985(3) through deliberate indifference to the Plaintiff's Fifth and

Thirteenth Amendment rights under the Constitution; and (II) and (III) Violations of the Florida Civil Remedies for Criminal Practices Act under Florida Statutes §772.103(3) - (4) (Florida's civil RICO statute) [D.E. 39]. Defendant responded by filing a Motion to Dismiss, pursuant to FRACP 12(b)(6), and a Motion to Strike the Amended Complaint. The district court dismissed the case without prejudice as Plaintiff failed to state a cause upon which relief could be granted.

Plaintiff filed a Second Amended Complaint, which included five counts. The Plaintiff voluntarily dismissed three of the counts. The remaining counts were Counts I and IV: Deliberate indifference in the deprivation of Plaintiff's Fifth and Thirteenth Amendment Constitutional Rights in violation of 42 U.S.C. §1985(3); and (IV) Conspiracy to violate the civil rights of the Plaintiff. Defendant filed a motion to dismiss the Second Amended Complaint pursuant to FRCP 12(b)(6) and a motion to strike portions of the Second Amended Complaint pursuant to FRCP 12(f), as being immaterial, impertinent and/or redundant. The motion to dismiss the Second Amended Complaint was granted with prejudice on February 29, 2008. The motion to strike was denied as moot.

On March 10, 2008 the case was appealed to the 11th Circuit.

On December 23, 2008, the Appeals Court affirmed the decision of the district court.

On February 27, 2009 the Appeals Court for the Eleventh denied rehearing.

STATEMENT OF FACTS

1. The district court made a finding that Vanguard requires servicing of four vehicles per hour to company standards [District Court's Order (1/05/06) at page 2]
2. The panel of the appeals court also made a finding that Vanguard's standard requires detailing four vehicles per hour to meet quantity and quality [Appeals Court's Decision at page 2].
3. Neither the district court nor the appeals court made a finding that the standard of servicing four vehicles per hour cannot be met although the appellant submitted evidence in detail that Vanguard failed to demonstrate that its standards can be met within fifteen minutes or less [See Second Amended Complaint at ¶¶ 15 and 18].
4. The petitioner complained that many employees stated that the standard of servicing four vehicles per hour cannot be met [See Second Amended Complaint at ¶¶ 18, 19, 31, 32, 33, and 34].
5. The employment of two high-ranking managers, Mr. Decker and Mr. Pelman, of

Vanguard were terminated within one week of filing the original complaint.

REASON FOR GRANTING THE PETITION

It is undisputed that Vanguard has set standards for its service agents, which requires servicing four vehicles per hour to meet quantity and quality. Quantity is not a subjective standard; however, the quality portions of the standards are subjective. Throughout the second amended complaint the petitioner complained that meeting the standards of servicing four vehicles per hour can be met if quality is ignored. The Appeals Court of the Eleventh Circuit has held that it is necessary to grant re-hearing en banc primarily to decide some important issues that arise regularly in job discrimination cases. Those issues have to do with an employer's ability to select its own criteria for making employment decisions and with the permissibility of using subjective criteria. See *Chapman v. Transport,* 229 F.3d 1012 (11 Cir. 10/02/2000).

The fact that a panel of the appeals court has affirmed the district court's decision in this case, then it is necessary to raise the issue if it is legal for an employer to set standards that are beyond human physical capabilities and then discharge the employee for not meeting those standards. Any reasonable person would agree that if an employer wants a job to be done in a certain way within a certain time, then the

employer must be able to give training and demonstrate that the way in which it wants a particular job to be completed that it can be done within the time allotted. The record in this case at no time showed that Vanguard demonstrated that its standards of servicing four vehicles per hour to 45 standards could be met. Vanguard is a company that has operations across the entire United States, which affects many service agents. The decision in *Chapman* is not consistent with the decision of this case.

The en banc court in *Chapman* looked at his 35-year record and drew inferences relative to other employees. The petitioner in this case had no problems with his job performance until Vanguard took over National Car Rental. The reason for this is because prior owners of National Car Rental had standards that were reasonable, not like Vanguard's unreasonable standards [See Second Amended Complaint at ¶ 66].

The decision of the appeals court panel in this case is not consistent with the decision in *Wagner v. Daewoo Heavy America Corp.*, 289 F.3d 1268(11 Cir 4/23/2002). A motion to dismiss a complaint under Federal Rules of Civil Procedure 12(b)(6) should not be granted unless the moving party has met the burden of showing beyond doubt that the plaintiff can prove no set of facts. *See Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). This burden has not been met by Vanguard on two grounds: (1) Vanguard has not presented any evidence that the undisputed standards of

servicing four vehicles per hour can be met. (2) Vanguard has not presented any evidence as to why it terminated the employment of two white managers within one week after the original complaint was filed. The appeals court panel in this case stated that this fact does not create an issue regarding whether the allegations in the second amended complaint amount to a "badge of slavery". Neither the panel nor the petitioner knows the true reasons for the terminations. However, any reasonable person would question why were they terminated because of doubts regarding their actions. It was Mr. Decker who terminated the petitioner and his supervisor was Mr. Pelman. Discovery is needed to erase the doubts. See *Arnold v. Board of Education of Escambia County*, 880 F2.d 305(11th Cir. 8/10/1989). In *Arnold*, the complaint was amended several times and discovery was allowed. The same should happen to the petitioner in this case.

The United States Court of Appeals for the Eleventh Circuit has so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise of this Court's supervisory power.

CONCLUSION

Based on the foregoing, Petitioner respectfully requests this Court to grant his Petition for Writ of Certiorari.

Respectfully submitted,

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 08-11176-CC

LENNON ANDERSON (Filed FEB. 27, 2009)
Plaintiff-Appellant,

v.

VANGUARD CAR RENTAL USA, INC.,
Defendant-Appellee.

On Appeal from the United States district Court for the Southern District of Florida

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ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

Before: ANDERSON, CARNES and WILSON, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the COURT having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of

Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

/s/ R. Lanier Anderson
R. Lanier Anderson, Judge

APPENDIX B
IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 08-11176-CC
(DO NOT PUBLISH)
OPINION
(Non-Argument Calendar)
LENNON ANDERSON (Filed DEC. 23, 2008)
Plaintiff-Appellant,

v.

VANGUARD CAR RENTAL USA, INC.,
Defendant-Appellee.

On Appeal from the United States District Court for the Southern District of Florida

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Before: ANDERSON, CARNES and WILSON, Circuit Judges.

PER CURIAM:

Lennon Anderson, proceeding pro-se, appeals the dismissal with prejudice of his 42 U.S.C. § 1985(3) civil complaint, for failure to state a claim upon which relief could be granted. On appeal, Anderson argues that he satisfied the pleading requirements of § 1985(3) by alleging that

Vanguard, his former employer, deprived him of rights or privileges under the Thirteenth Amendment and by alleging that there was a racial animus behind Vanguard's actions. In the alternative, Anderson argues that the district court erred by dismissing his second amended complaint with prejudice, because he could remedy and defect through amendment.

Anderson was employed by Vanguard Car Rental USA, Inc. ("Vanguard") as a service agent. He was expected to detail four vehicles per hour while meeting company quality standards. Anderson alleges that this requirement was impossible to meet. He complained to management and suggested new ways to meet Vanguard's quality and quantity expectations. On June 11, 2005, his hours were cut 41 percent. On July 23, 2005, Anderson was terminated for low productivity. Anderson asserts that 99.9 percent of the service agents employed by Vanguard at the Ft. Lauderdale International Airport are black. Several of the managers are white. Furthermore, Vanguard contracted with Hispanic "temp" agents who were not subject to the same impossible –to-meet standards as the service agents employed by Vanguard. Anderson alleges that Vanguard used "threats of employment termination to force job completion and create fear in he process." He claims that the impossible-to-meet work standard amounted to a "badge of slavery prohibited by the Thirteenth Amendment."

We review de-novo the district court's grant of a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for the failure to state a claim, accepting the factual allegations in the complaint as true and construing them in the light most favorable to the plaintiff. D.P. ex. Rel. E.P. v. Sch. Bd. Of Broward County, 483 F.3d 725, 728 (11th Cir. 2007). "[P]ro-se pleadings are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed." Trawinski v. United Tech., 313 F.3d 1295, 1297 (11th Cir. 2002). "while a complaint attacked by Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of a cause of action's elements will not do." Bell Atlantic v. Twombly, 550 U.S. ___, 127 S.Ct. 1955, 1964-65, 167, L.Ed.2d 929 (2007) (citation omitted).

Section 1985(3) provides a remedy for conspiracy to interfere with civil rights. See 42 U.S.C. § 1985(3). To state a claim under § 1985(3), a plaintiff must allege: "(1) a conspiracy; (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; and (3) an act in furtherance of the conspiracy; (4) whereby a person is either injured in his person or property or deprived of any right or privilege of a citizen of the United States." Lucero v. Operation Recue of

Birmingham, 954 F.2d 624, 627 (11th Cir. 1992). To prove the second element, the plaintiff must show a deprivation of rights under a specific statute or constitutional provision and "some racial, or perhaps otherwise classbased, invidiously discriminatory animus behind the conspirators' action." Id. At 628.

Anderson fails to state a claim under 42 U.S.C. § 1985(3) because the second amended complaint failed to allege any racial or other discriminatory animus behind Vanguard's actions. In support of this conclusion, the district court noted: (1) although the complaint alleges that Hispanic "temp" workers were not required to meet the same impossible work standards as other service agents (detailing four cars per hour), it also stated that the temporary workers were not employed directly by Vanguard; (2) Anderson never alleged that the temporary workers were treated differently on account of race; (3) by stating that 99.9 percent of service agents were black, Anderson indicated that at least some non-black service agents were subjected to the same impossible-to-meet work standards; and (4) Anderson characterized Vanguard's motive as "making money" and "maximizing profit." We find no error in the district court's analysis.

Anderson also fails to state a claim under 42 U.S.C. § 1985(3) because he fails to assert a valid claim under the Thirteenth Amendment. Anderson argues that the Vanguard's impossible-to-meet work standards are a 'badge of slavery' prohibited

by the Thirteenth Amendment. However, Anderson did not allege that Vanguard, or its agents, forced him to work, nor has he sufficiently alleged any racial animus behind Vanguard's action. Thus Vanguard's work standards "cannot be equated to an actual restraint on the liberty of black citizens that is in any sense comparable to the odious practice the Thirteenth Amendment was design to eradicate." City of Memphis v. Greene, 451 U.S. 100, 128, 101 S.Ct. 1584, 1600, 67 L.Ed.2d 769 (1981). Anderson has also abandoned any attempt to argue that he was subject to involuntary servitude. Accordingly, Anderson failed to plead a deprivation of the rights or privileges under the Thirteenth Amendment.[1]

When a complaint fails to state a claim for relief, a district court can grant leave to amend subject to reasonable conditions and limitations. Garfield v. NDC Health Corp., 466 F. 3d 1255, 1270 (11th Cir. 2006). However, the leniency afforded pro-se pleadings "does not give a court license to serve as a de facto counsel for a party ... or to rewrite an otherwise deficient pleading in order to sustain action." GJR Inv., Inc. v. County of Escambia, Fla., 132 F.3d 1359, 1369 (11th Cir. 1998) (citation omitted). A district court need not allow

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[1] In his briefs to this Court, Appellant repeatedly emphasizes that two of Vanguard's managers were terminated within one week after the original complaint ws served on Vanguard. However, this fact does not create an issue regarding whether the allegations in the second amended complaint amount "to a badge of slavery."

an amendment: "(1) where there has been undue delay.... or repeated failure to cure deficiencies by amendments previously allowed; (2) where allowing amendment would cause undue prejudice to the opposing part; or (3) where amendment would cause undue prejudice to the opposing part; or where amendment would be futile." Bryant v. Dupree, 252 F.3d 1161, 1163 (11th Cir. 2001). We review denial of leave to amend for abuse of discretion. Garfield, 466 F.3d at 1270. The district court noted that Anderson had two opportunities to amend his complaint but failed to cure its deficiencies each time. Furthermore, the district court found that on the facts, as alleged, it appeared that Anderson would be unable to state a cause of action by amending the complaint and, as a result, additional amendment would be futile. We discern no abuse of discretion.

Accordingly, for the reasons set forth above, we affirm the district court's dismissal with prejudice of Anderson's civil action pursuant to Federal Rules of Civil Procedure 12(b)(6).

AFFIRMRD.[2]

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[2] Appellant's request for oral argument is DENIED.

APPENDIX C
UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA FORT LAUDERDALE DIVISION

No. 05-61359-CIV-GRAHAM/SULLIVAN

LENNON ANDERSON (Filed FEB. 29, 2008)
Plaintiff,

v.

VANGUARD CAR RENTAL USA, INC.,
Defendant.
_____/

ORDER

THIS CAUSE came before the Court upon Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint [D.E. 45] and Motion to Strike Second Amended Complaint [D.E. 46]

THE COURT has considered the Motions, the pertinent portions of the record, and is otherwise fully advised in the premises.

I. **BACKGROUND**

On August 11, 2005, the Plaintiff, proceeding pro se, filed his Original Complaint against Defendant. The Complaint included six counts: (I) involuntary servitude under 18 U.S.C. § 1584; (II) discharge without cause under 18 U.S.C. 1584; (III)

depriving persons of rights or privileges under 42 U.S.C. § 1985(3); (IV) peonage under 42 U.S.C. §1994; (V) equitable accounting under Florida law; and (VI) negligence under Florida law. Defendant filed a Motion to Dismiss [D.E.16], which this Court granted on January 10, 2006. The Court dismissed the case without prejudice and closed the case for administrative purposes pending Plaintiff's filing of an amended complaint [D.E. 36].

Plaintiff filed an Amended Complaint on January 9, 2007. The Amended Complaint included three counts: (I)Depriving persons of rights or privileges under 42 U.S.C. § 1985(3) through deliberate indifference to the Plaintiff's Fifth and Thirteenth Amendment rights under the Constitution; and (II) and (III) violations of the Florida Civil Remedies for Criminal Practices Act under Fla. Stat. §772.103(3)-(4) (Florida's civil RICO statute) [D.E. 39]. Defendant responded by filing a Motion to Dismiss and a Motion to Strike the Amended Complaint. The Court again dismissed the case without prejudice as Plaintiff failed to state a cause upon which relief could be granted. See [D.E. 43].

Plaintiff then filed a Second Amended Complaint [D.E. 44]. The Second Amended Complaint includes a fourteen (14) page statement of alleged facts that is virtually identical to those facts alleged in Plaintiff's Original Complaint. Accordingly, the Court will not restate the alleged facts from the Second Amended

Complaint for purposes of resolving the pending Motions. The Second Amended Complaint, however, contains five counts, three of which have been voluntarily dismissed by the Plaintiff. See [D.E. 55]. The remaining Counts, I and IV, claim: (I) deliberate indifference in the deprivation of Plaintiff's Fifth and Thirteenth Amendment Constitutional Rights in violation of 42 U.S.C. § 1985(3); and (IV) Conspiracy to violate the civil rights of the Plaintiff [D.E.]. Defendant has now filed a Motion to dismiss Plaintiff's Second Amended Complaint for failure to state a cause upon which relief may be granted, pursuant to Fed. R. Civ. P. 12(b)(6). Defendant also seeks to strike portions of the Plaintiff's Second Amended Complaint pursuant to Fed. R. Civ. P. 12(f), as being immaterial, impertinent and/or redundant. [D.E.].

II. LAW AND DISCUSSION

A. Motion to dismiss Pursuant to Fed. R. Civ. Pro. 12(b)(6)

A complaint should not be dismissed where there are enough facts to state a claim to relief that is plausible on its face. See Bell Atlantic Corp. v. Twombly, 127 S.Ct. 1955, 11974 (May 21, 2007). Once a complaint sates all claims adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint. See Twombly at 1969. A court must accept a plaintiff's well pled facts as true and construe the

complaint in the light most favorable to plaintiff. Scheuer v. Rhodes, 94 S.Ct. 1683, 416 U.S. 232 (1974). The threshold of sufficiency that a complaint must meet is exceedingly low. Anacta v. Prison Health Serv. Inc., 769 F.2d 700, 703 (11th Cir 1985); Jackson v. Okaloosa County, Fla., 21 F.3d 1531, 1534 (11th Cir. 1994).

In addition, "pro se pleadings are held to a less stringent standard than pleading drafted by attorneys and will, therefore be liberally construed." Trawinski v. United Tech., 313 F.3d 1295, 1297 (11th Cir. 2002) (quoting Tannenbaum v. United States, 148 F.3d 1262, 1263 (11th Cir. 1998)). "This leniency does not give a court license to serve as a de facto counsel for a party... or to rewrite an otherwise deficient pleading in order to sustain an action." GJR Inv., Inc. v. County of Escambia, Fla., 132 F.3d 1359, 1369 (11th Cir. 1998) (citations omitted). In fact, a court may dismiss a plaintiff's complaint with prejudice where the plaintiff has been given the opportunity to amend his complaint in order to state a claim on which relief could be granted, and further attempts to amend the complaint would be futile. Bryant v. Dupree, 252 F.3d 1161, 1163 (11Cir. 2001).

B. 42 U.S.C. §1985(3)

Defendant asserts that Cunt I, which alleges that Defendant acted with deliberate indifference in depriving Plaintiff of his Constitutional rights under 42 U.S.C. §1985(3), and Count IV, Conspiracy, which alleges a conspiracy to deprive

Plaintiff of the same constitutional rights, must be dismissed for Plaintiff's failure to establish a prima facie claim [D.E. 45]. The Court agrees.

In the Court's first Order granting Defendant's Motion to Dismiss Plaintiff's Original Complaint, the Court explained that the elements of a cause of action under section 1985(3) included:

> (1) a conspiracy;
> (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; and
> (3) an act in furtherance of the conspiracy;
> (4) whereby a person is either injured in his person or property or deprived of any right or privilege of a citizen of the United States [D.E. 36]

Plaintiff still fails to satisfy the second element of a 42 U.S.C. §1985(3) claim, that he or any class or persons was deprived of the equal protection of the laws or of equal privileges and immunities under the laws as a result of the alleged conspiracy.

1. Deprivation of Equal Protection Under the Law

It is beyond doubt that 42 U.S.C. §1985(3) provides no substantive rights itself; it merely provides a remedy for violation of the rights it designates. Great American Federal Saving & Loan Ass'n v. Novotny, 99 S.Ct 2345, 2349, 442 U.S. 366, 372 (1979). Indeed, the Supreme Court has stated,

> "42 U.S.C. §1985(3) creates no rights. It is purely a remedial statute, providing a civil cause of action when some otherwise defined federal right equal protection of the laws or equal privileges and immunities under the laws is breached by a conspiracy in the manner defined by the section"

Id. At 376. Thus, for Plaintiff's action to survive, it must assert a deprivation of rights under a specific statute or constitutional provision. See, United Brotherhood of Carpenters and Jointers of Amer. Local 610 AFL-CIO v. Scott, 463 U.S. 825, 833-34, 103 S.Ct. 3352, 3359 (1983); Baker v. McDonald's Corp., 686 F. Supp. 1474, 1480 (S.D. Fla. 1987). Plaintiff attempts to satisfy this requirement by alleging that his rights guaranteed under the Fifth and Thirteenth Amendments to the United States Constitution were denied. However, Plaintiff still fails to assert a valid claim under either of these Amendments.

a) Fifth Amendment

First, in order for Plaintiff to prevail on his Fifth Amendment claim there must be a state action.

The Fifth Amendment applies to the federal government only and not to private actions. Anthony v. Franklin County, 799 F.2d 681, 683 n. 1 (11th Cir. 1986). See also Knoetze v. United States, 634, F.2d 207, 211 (5th Cir. 1981) (citing Perry v. Sindermann, 408 U.S. 593, 92 S.Ct. 2694 (1972)) (stating that Fifth Amendment protection attaches "only when the Plaintiff does not dispute that Defendant is a private corporation and thus is not a state actor, therefore Plaintiff has failed to state a valid Fifth Amendment claim.

b) Thirteenth Amendment

In the Original Complaint, Plaintiff alleged that Defendant held him in a state of indentured servitude, in violation of 18 U.S.C. § 1584 and the Thirteenth Amendment of the United States Constitution. In dismissing the Original Complaint, this Court found that Plaintiff did not properly state a cause of action as Plaintiff failed to allege physical restraint, physical injury, or the use of threat of legal coercion through law or the legal process as required for a claim of indentured servitude under 18 U.S.C. §1584 and the Thirteenth Amendment [D.E. 36]. In Plaintiff's Amended Complaint, Plaintiff altered the fact pattern slightly and asserted that "work of this nature is servitude pursuant to the Thirteenth Amendment . . . It was as if employees were being treated as slaves." This Court found that, even with that language, the

Amended Complaint still failed to assert a valid claim of involuntary servitude.

The Second Amended Complaint, while now sole asserting a Thirteenth Amendment claim and no longer including 18 U.S.C. §1584, still fails to correct this deficiency. In the Second Amended Complaint, Plaintiff alleges that, Defendant used "...threats of employment termination to force job completion and create fear in the process" and, that "[w]ork of this nature (servicing four vehicles per hour to company standards) is a badge of slavery prohibited by the Thirteenth Amendment to the United States Constitution." [D.E. 44 at ¶ 14]. This is virtually identical to Plaintiff's allegations in both the Original Complaint and the Amended Complaint. Plaintiff does not allege anywhere in the Second Amended Complaint that Defendant coerced him through the use or threat of physical restraint or physical injury or by the use or threat of coercion through law or the legal process. See U.S. v Kozminiski, 108 S.Ct. 2751, 2765, 487 U.S. 931, 952 (1988). The Supreme Court has held that coercion does not extend to cases where an employee merely asserts that his will to quit has been subdued by threat which seriously affects his future welfare but as to which he still has a choice, however painful. See Kozminski, 487 U.S. at 950 (quoting United States v. Schackney, 333 F. 2d. 475, 487 (2nd Cir. 1964)). Such is the case, herein. Thus, Plaintiff has not properly alleged that his Thirteenth Amendment rights have been violated.

2. Invidiously Discriminatory Animus

Plaintiff fails to state a claim under 42 U.S.C. §1895(3), on a different ground, as well. In dismissing the Plaintiff's Original Complaint, this Court held that, pursuant to the Eleventh Circuit holding in Lucero v. Operation Rescue of Birmingham, 954 F. 2d 624, 628 (11th Cir. 1992), Plaintiff was required to allege some racial, or otherwise class-based, invidiously discriminatory animus behind Defendant's actions in order to meet the second element of a cause of action under Section 1985(3) [D.E. 36 at 7]. This Court found that Plaintiff failed to properly plead a cause of action under 42 U.S.C. §1985(3) as the Original Complaint failed to allege any racial or other discriminatory animus behind the Defendant's actions [D.E. 36 at 7]. In dismissing Plaintiff's amended Complaint, this Court held that while Plaintiff asserted that, "99.9% of the service agents.... are blacks," the complaint still lacked any allegation of racial or class-based invidiously discriminatory animus behind Defendant's actions [D.E. 43 at 5].

In an effort to correct this omission, Plaintiff now alleges that he and "99.9% of Service Agents working for Defendant at Fort Lauderdale International Airport are black and they are subjected to badges of slavery through racial discriminatory means by servicing four vehicles per hour to defendant's 45 standards" [D.E. 44 at ¶46]. Plaintiff also alleges that two management officials

are white, the other management official is a non-white of Hispanic origin, and that Hispanic "temp" agents who serviced vehicles were not held to the same standard as the Plaintiff and the other agents. [D.E. 44 at ¶¶ 47-48]. However, Plaintiff states that the Hispanic temporary workers were contracted from other countries and were not employed directly by the Defendant. Id. In addition, Plaintiff does not even allege that the Black workers were treated differently than the temporary Hispanic workers on the account of race.[1] In fact, the Plaintiff's facts as alleged in the complaint, indicate that at least some segment of the employees subjected to the alleged unfair working standards were not black.[2] In addition,

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[1] To the extent that Plaintiff is attempting to allege employment discrimination by a private employer, whether directly or through disparate impact, such a claim should be brought pursuant to 42 U.S.C. 2000(e), et seq., (Title Viii). The Supreme Court held in Great Amer. Fed. Savings and Loans Ass'n v. Novotny, 99 S.Ct. 2345, 2350, 442 U.S. 366, 375 (1979), that a violation of Title VII may not be asserted through a 42 U.S.C. §1985(3) complaint and stated, "[I]f a violation of Title VII could be asserted through 42 U.S.C. §1985(3) a complaint could completely bypass the administrative process, which plays such a crucial role in the scheme established by Congress n Title VII." Id. In this case, there is no indication that Plaintiff has attempted to exhaust any administrative procedures under Title VII or to otherwise avail himself to any potential relief under Title VII provisions.

[2] The Plaintiff alleges that the agents at the Plaintiff's job site are 99.9 % black and thus, there is, at least, .1% of another racial category that is subjected to the same

although the Plaintiff has included "racial discrimination" language in the Complaint, the Plaintiff characterizes the Defendant's conspiracy as being motivated by "making money" and "maximizing profits." Such motivation does not satisfy the "invidious discriminatory animus" requirement of a 42 U.S.C. §1985(3) claim. See United Brotherhood of Carpenters and Joiners of Amer., Local 610 AFL-CIO v. Scott, 463 U.S. 825, 839, 103 S.Ct. 3352, 3362 (1983)(opining that court cannot construe §1985(3) to reach conspiracies motivated by economic or commercial animus). Thus the Second Amended Complaint remains without any cable allegation of racial, or otherwise class-based, invidiously discriminatory animus behind Defendant's actions.

Accordingly, Counts I and IV again fail to state a cause of action under 42 U.S.C. § 1985(3). Thus, Plaintiff after three attempts has yet to assert a valid claim under the law. Further, it does not appear that given the factual scenario presented by Plaintiff, that Plaintiff is able to state a valid cause of action by amending the Complaint, and thus Plaintiff's action is due to be dismissed with prejudice. See Bryant v. Dupree, 252 F.3d 1161 (11th Cir. 2001) (holding that dismissal with

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working conditions. See [D.E. 44 at ¶ 46]. Plaintiff has failed to allege that those employees were treated differently than the Black employees, or were discriminated against because of their race.

prejudice without allowing an amendment is proper where an amendment would be futile.

III. CONCLUSION

Based upon the foregoing, it is

ORDERED AND ADJUDGED Defendant's Motion to Dismiss with prejudice is **GRANTED** [D.E. 45]. Defendant's Motion to strike [D.E. 46] and all other motions are **DENIED as MOOT.**

DONE AND ORDERED in Chambers at Miami, Florida, this 29th day of February 2008.

/s/ Donald L. Graham
Donald L. Graham, Judge

APPENDIX D
UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA FORT LAUDERDALE DIVISION

No. 05-61359-CIV-GRAHAM/SULLIVAN

LENNON ANDERSON (Filed AUG. 9, 2007)
Plaintiff,

v.

VANGUARD CAR RENTAL USA, INC.,
Defendant.
_____/

SECOND AMENDED COMPLAINT

Plaintiff, Lennon Anderson, ("Plaintiff" hereafter) pursuant to the applicable Federal Rules of Civil Procedures and the July 19, 2007 Order of the Court, hereby sues Defendant, Vanguard Car Rental USA, Inc., ("Defendant" hereafter), and states as follows:

PARTIES

1. Plaintiff was an employee (Service Agent) of National Car Rental, Inc., (NCR) located at the Fort Lauderdale International Airport, Broward County, Florida, from November 1999 to July 23, 2005. Plaintiff was a manual laborer whose

work was characterized largely by physical exertion.

2. Defendant is a global, nationwide, for profit, corporation that owns and operates NCR and Alamo Car Rental (ACR) with an office for the transaction of its customary business situated at the Fort Lauderdale International Airport, in Broward County, Florida. NCR and ACR are "affiliated corporations" which conduct the affairs of the defendant.

JURISDICTION AND VENUE

3. This case arises under the United States Constitution and the laws of the United States and presents federal questions under the fifth and thirteenth amendment, 42 U.S.C. §1985(3), and 28 U.S.C. §1331. The Court has authority to grant injunctive relief pursuant to the Declaratory Judgment Act, 28 U.S.C.§2201. The Court has authority to award cost under 28 U.S.C.§2412. Venue is proper in the district under 28 U.S.C.§1391(e).

DEFINITIONS
(According to the Webster Dictionary and Historical Documents)

4. Badges of Slavery: The belief and practice of treating black people as interior. Examples are as follows but not limited to: White

man (bus driver) telling Rosa Parks to give up her seat on a bus to someone white; separation of blacks in railcars, public parks, theaters, ...etc., not allowing blacks to buy homes in white neighborhoods, baring blacks from getting an education.

5. Labor is (1) physical or mental exertion; work. (2) a specific task; (3) a. all wage-earning workers distinguished from capital or management; b. all manual workers whose work is characterized largely by physical exertion: distinguished from white collar or professional workers.

6. Liberty is freedom or release from slavery, imprisonment, captivity or any other form of arbitrary control.

7. Conspiracy is a planning and acting together secretly, especially for an unlawful or harmful purpose.

STATEMENT OF FACTS

8. On April 10, 2005, the defendant, in bad faith, suspended the plaintiff from work due to low production of serviced vehicles (see Exhibit 10 under attached Exhibit A of original complaint)[3]. Exhibit A, attached to the original complaint explains why the plaintiff's production of serviced

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[3] Rather than attaching all the exhibits from the original complaint and amended complaint, they have been referenced.

vehicles have been low and what the defendant could have done to improve quantity and quality.

9. On April 14, 2005, in good faith, the plaintiff informed his supervisor, Mr. Rodrigo Zaldumbide about quality customer service through production from service agents (see Exhibit A of the original complaint). Exhibit 1 under Exhibit A, attached to the original complaint, defines the duties of a service agent. Exhibit 1 does not define the quantity of vehicles required to be serviced per hour. Also, the service manual for service agents does not define the quantity of vehicles required to be serviced per hour.

10. The defendant declared in Exhibit 7 under Exhibit A, attached to the original complaint, that the quantity standard expected from service agents is four vehicles per hour yielding 32 vehicles in an 8-hour shift. This work standard is a badge of slavery.

11. The plaintiff has made it clear to defendant's management that the expected standard is impossible to do, unless the service agent ignores quality. Ignoring quality not only violates the duties of a service agent; but, also the ethical standards of the defendant. Violation of the ethical standards of the defendant violates the compliance program of the defendant.

12. The plaintiff had been threatened that he increase his production of serviced vehicles or face termination of employment. The plaintiff discussed at page 3 of Exhibit A, attached to the original complaint, that his proactive nature will

not allow him to ignore quality and does not fear the threat of employment termination.

13. The plaintiff refused to ignore quality, which resulted in low production of serviced vehicles. In the past, prior to certification, the Ft. Lauderdale station failed an audit and Mr. Leonard T. Carey, Operations Manager, called the plaintiff into his office and reprimanded him for not properly servicing a vehicle. The vehicle had the previous customer's contract in the glove compartment.

14. The plaintiff declared at page 1 under Exhibit A, attached to the original complaint, that he and his coworkers are neither robots nor slaves. The plaintiff does not object to hard work as demonstrated at page 8 of Exhibit A, attached to the original complaint, where he let customers know that he does not mind doing extra work as long as they are satisfied. The plaintiff objects to hard work when it is a badge of slavery and it cannot be completed within the timeframe allowed by the defendant, including using threats of employment termination to force job completion and create fear in the process. Work of this nature (servicing four vehicles per hour to company standards) is a badge of slavery prohibited by the 13th Amendment to the United States Constitution. This amendment prohibits slavery and involuntary servitude, including all badges and incidents of slavery

15. At a June 7, 2005 teleconference, in the presence of Ms. Vivian Burbage, Human

Resource Manager, Mr. William Decker, City Manager, agreed to provide training demonstrating that four vehicles per hour can be serviced to company standards.

16. On June 11, 2005, in bad faith, Mr. Zaldumbide slashed the plaintiff's work hours by 41%. He stated that the plaintiff's hours were being slashed due to slow business. The plaintiff explained to him that his explanation couldn't be true because the defendant was still hiring temps and fulltime employees (see Exhibit 2 under attached Exhibit B, attached to the original complaint,). Furthermore, the defendant was not reducing or restructuring its workforce; and, the plaintiff had seniority over temps and newly hired fulltime employees. No other employee's hours were slashed by 41% as the plaintiff's.

17. On June 12, 2005, Mr. Decker said that the defendant does not need the plaintiff. This occurred when the plaintiff discussed his work hours being slashed by 41% and issues regarding training.

18. On June 12, 2005, Mr. Eddie, lead service agent, attempted to demonstrate that four vehicles can be serviced per hour yielding 32 vehicles serviced to company standards in an 8-hour shift (see Exhibit 2 under Exhibit B, attached to the original complaint). He failed to demonstrate that four vehicles could be serviced in an hour. In fact, he stated that it is impossible to do. If it can be done, he would like to know who at NCR can

service a vehicle in 15 minutes or less to company standards to yield 32 vehicles in an 8-hour shift.

19. Another lead service agent, Mr. Dolyres, stated to the plaintiff that servicing four vehicles per hour to company standards is impossible to do. He also stated that he can give management 32 vehicles in an 8-hour shift but they will not be done to company standards. He also added that in order to give management 32 vehicles that are serviced to company standards in an 8-hour shift, one would have to work like a slave (see page 2 at Exhibit 2 under Exhibit B, attached to the original complaint).

20. On June 18, 2005, the plaintiff met with Mr. Decker to discuss the defendant's new incentive program that went into effect on July 1, 2005 (see Exhibit 1 under Exhibit B, attached to the original complaint). He stated that there will be no more raises given. To get extra money, service agents will have to earn it through the incentive program. He also stated that service agents are spending too much time on vehicles. The vehicles must be serviced quickly in order to meet the quantity needed for the incentive pay (see page 1 of Exhibit B, attached to the original complaint). In the meeting, quality did not seem to be a concern to Mr. Decker, which is a violation of defendant's ethics.

21. The daily game plan, dated June 25, 2005, of the defendant (see Exhibit 8 under Exhibit B, attached to the original complaint) states at

B.O.L.O. that we have to improve our quantity to make the day easy.

22. The defendant through its managers, specifically, Mr. Eli Pelman, General Manager, Mr. Decker and Mr. Zaldumbide compelled service agents to service four vehicles per hour to company standards which is impossible to do, unless quality is ignored. Ignoring quality is a violation of defendant's ethics. At times, Mr. Zaldumbide would yell at service agents, including the plaintiff, that he wants four vehicles per hour as he walks around on the production floor. At times, he would invade plaintiff's and other service agents' personal space at yell directly in ones face.

23. On June 19, 2005, the plaintiff and Mr. Herdy Telfort worked as a team and demonstrated that through synergy, the defendant can achieve quantity and quality (see Exhibit B, attached to the original complaint).

24. On June 30, 2005, in good faith, the plaintiff reported to the President/CEO, Mr. William Lobeck, the production problem with a solution (see Exhibit B, attached to the original complaint). The solution had to do with service agents working in teams rather than individually. The plaintiff also discussed that it will be difficult for employees to get the incentive under the current operational procedures. The plaintiff did not receive a response from Mr. Lobeck.

25. On July 3, 2005, the defendant, through Mr. Decker issued to the plaintiff a

Corrective Action Notice - Final Warning, regarding low production of serviced vehicles.

26. The plaintiff, in good faith, responded on July 8, 2005. See Exhibit C, attached to the original complaint. The plaintiff complained that he did not received the training necessary to meet the company standards for servicing four vehicles per hour to yield 32 vehicles in an 8-hour shift. In addition, the plaintiff complained that Mr. Decker did not comply with the June 7, 2005 agreement which was to provide training demonstrating that four vehicles per hour can be serviced to company standards. Mr. Decker did not acknowledge the fact that the plaintiff's performance improved under a different operational procedure as discussed in paragraph 23 above.

27. On July 15, 2005, the plaintiff, in good faith, reported to Ms. Burbage, documentation on Mr. Decker. See Exhibit D, attached to the original complaint. A question was proposed to Ms. Burbage; specifically, "Is Mr. Decker's action justified considering the fact that he did not comply with the June 7th agreement which was to provide training demonstrating that four vehicles per hour can be serviced to company standards and thereby yielding 32 vehicles per 8-hour shift?" The plaintiff never heard back from Ms. Burbage regarding the July 15th memorandum.

28. It is the defendant's practice to have employees sign off on important issues such as training and receiving important documents. For example, the plaintiff had to sign that he received the booklet containing the defendant's corporate compliance policies and that he attended the training seminar for the corporate compliance policies which was taught by Mr. Carey; however, the plaintiff never signed any document that he received training demonstrating that four vehicles per hour can be serviced to company standards nor did he receive a certificate from the defendant indicating that he has been trained to service four vehicles per hour to company standards.

29. Another example of the plaintiff signing off on a document is the "Customer Service Memo" shown at Exhibit 9 under Exhibit A, attached to the original complaint.

30. Furthermore, with the training received from the defendant, the plaintiff was able to service a vehicle to company standards within 45 minutes to an hour. This is the reason why the plaintiff's production has been low. See Exhibit 4 under Exhibit A, attached to the original complaint. Nowhere is it documented on the certificate that the plaintiff had been trained to service four vehicles per hour to company standards. There was no training given that demonstrated that four vehicles per hour can be serviced to company standards.

31. The plaintiff knows of no employee who was able to get a venicle certified in 15

minutes or less. To receive the certificate, the plaintiff had to service six classes of vehicles: economy, midsize, luxury, SUV, minivan and convertible. To service these vehicles for certification, none took 15 minutes or less. On this basis, it was not possible for the plaintiff to service four vehicles per hour to company standards, unless he ignored quality which would cause complaints from customers and violated defendant's ethics, including violation of the "Customer Service Memo" discussed at paragraph 29 above.

32. During the plaintiff's last week, he asked several coworkers how they produced high numbers. Mr. Jean responded by stating that he cannot do everything and produce four vehicles per hour. This fact is supported by a video sent to Ms. Burbage which shows an employee ignoring quality to service 40 vehicles in an 8-hour shift.

33. On July 17, 2005, another service agent, Ms. Twanda, told the plaintiff that servicing four vehicles per hour to company standards couldn't be done unless you ignore things. She also stated that she feels like a slave.

34. On July 23, 2005, Mr. Keith, lead service agent at ACR, said to the plaintiff that if service agents do all that is required, then the defendant will not be able to meet the quantity vehicles required for the customers.

35. When service agents ignore quality, customers complain thus triggering QSP (quality service program). If there is a QSP in any month, the service agents do not receive the incentive pay, even if the quantity required was met. Under

the current operational procedures, service agents are actually in bondage under badges of slavery because if they service vehicles to meet quantity, quality is ignored and QSPs prevents the incentive pay. If service agents work on quality to avoid QSPs, quantity prevents the incentive pay.

36. Exhibit E, attached to the original complaint, shows a QSP for the month of July 2005: July 9, 2005, 1 QSP, mechanical/electric windows not working. Other QSPs can be seen at Exhibit 8 under Exhibit B, attached to the original complaint.

37. The defendant is aware of the quality problems. See "Customer Service Memo" from Mr. Carey at Exhibit 9 under Exhibit A, attached to the original complaint.

38. The "Customer Service Memo" has not been retracted by the defendant. The best is expected from service agents. Based on this memorandum, ignoring quality is not only unethical, but it is unacceptable. The memorandum states, "Everyone will be expected to offer the highest level of service to our customers. We [the defendant] will no longer accept anything less than this" (emphasis added). The memorandum did not state that service agents must service four vehicles per hour to yield 32 vehicles in an 8-hour shift, and ignore quality. The memo addressed quality, not quantity.

39. On July 23, 2005, in bad faith, Mr. Decker terminated the plaintiff's employment in the presence of Mr. Zaldumbide claiming low productivity, which was approved by Ms. Vivian

Burbage. The memorandum to this effect is Exhibit F, attached to the original complaint. Mr. Decker did not give the plaintiff anything in writing at the time of termination. The low productivity of vehicles serviced was not the plaintiff's fault; but, it is a problem within the defendant's management. The defendant cannot have quantity and quality under its current operational procedures.

40. The defendant's current operational procedures for service agents is a lose/lose system. It is a system that operates on badges of slavery. The operational procedures currently in place for service agents will work if customers return their vehicles meeting the defendant's 45 standards. Getting returned vehicles that already meet the defendant's 45 standards is rare; a service agent may not have to fill up the gas tank because the customer opted to return the vehicle's fuel tank full; also, the service agent may not have to fill up the washer fluid tank because it was already full; however, there will be other work for the service agent to do such as vacuuming, removing stains from the carpet and mats; removing bugs from the front end of the vehicle and windshield etc., based on the 45 standards. A sample of what a service agent encounters on a daily basis is shown in Exhibit G, attached to the original complaint. This vehicle was serviced by the plaintiff.

41. The defendant's managers, Mr. Pelman, Mr. Decker, and Mr. Zaldumbide give the impression that the service agent's job is simple

and very little cleaning is needed which is not true. The defendant's standards require checking the vehicles for proper operations such as checking the tire pressures, lights, horn, air condition, etc.. These are requirements which most service agents do not do and these managers (Mr. Pelman, Mr. Decker and Mr. Zaldumbide) do not care because they allow vehicles to be serviced and given to the customers that do not meet all 45 standards, which violates the customer service memorandum and the expectation of Mr. Lobeck. For example, a customer found marijuana in a rental vehicle which caused adjustment of the customer's contract (see page 1 of Exhibit B, attached to the original complaint). This is a management problem which the plaintiff explained at page 2 of Exhibit B, attached to the original complaint.

42. With the 15 minutes time frame given by the defendant to service a vehicle, the current operational procedures do not work to deliver quantity and quality when vehicles are returned with lots of sand on the carpet and mats or spilled drinks on dash board, seats, carpet and mats which create stains, not to mention the garbage left behind by the customers, including finger prints on the windows, etc.. The defendant's example in the service agent's training manual has a completion time of 30 minutes (see Exhibit 34 under Exhibit A, attached to the original complaint).

43. The defendant has a system for service agents that works if the returned vehicles

already meet the 45 standards (best case scenarios) which is rare; but, the current operational procedural system fails which is very common for service agents. Under the current operational procedures, more than 15 minutes per vehicle is needed to properly service a vehicle to the expected standards of the defendant, pursuant to the 45 standards, pursuant to the "Customer Service Memo" and pursuant to the expectation of Mr. Lobeck that all associates provide quality service throughout every level of the defendant with business conduct at the highest standards attainable both legally and ethically (see Exhibit H, attached to the original complaint).

44. The plaintiff was suspended from work with the threat of employment termination if his production of vehicles did not improve.

45. The plaintiff and all the employees mentioned above in paragraphs 18, 19, 32, 33 and 34 are all of the black race.

46. 99.9 percent of the Service Agents located at the Ft. Lauderdale International Airport for Vanguard Car Rental are blacks and they are subjected to badges of slavery through racial discriminatory means by servicing four vehicles per hour to defendant's 45 standards.

47. The defendant contracted temps from Brazil and other latin countries to assist with servicing the vehicles in order to meet the quantity of vehicles needed daily. Each Hispanic would service a vehicle, just as the plaintiff, so that it

could be rented by customers of NCR. The Hispanic service agents, however, were not subjected to the same 45 standards as the plaintiff and other service agents who were employed directly by the defendant. Additionally, they were not even required to wear uniforms while the plaintiff could not report to work without his uniform. At times, the Hispanic service agents would comment to the plaintiff that "National have you working like a slave" which created a sense of inferiority.

48. Mr. Eli Pelman and Mr. William Decker are whites and neither of them has demonstrated that the defendant's standard of servicing four vehicles per hour can be met. Nonetheless, they inflicted badges of slavery on the plaintiff.

49. Mr. Rodrigo Zaldumbide is non-white of Hispanic origin. He is, however, not of the black race.

50. On several occasions, Mr. Rodrigo Zaldumbide placed in the plaintiff's workstation vehicles that were very dirty and he would comment as he existed the vehicles that he wants the vehicles in 10 minutes. Sometimes he would say five minutes. He was told by the plaintiff that he couldn't have them in 10 minutes considering the condition of the vehicles.

51. On several occasions, Mr. Rodrigo Zaldumbide called the plaintiff a "turtle" for not producing vehicles in 10 minutes.

52. On several occasions, Mr. Rodrigo Zaldumbide would come over to the plaintiff and ask him how many hours he is working for the day. When he was told 15 hours or 12 hours, he would respond that he wants 60 vehicles or 48 vehicles, respectively, at the end of the shift. Since my hours were slashed by 41%, I was working 8-hour days and Mr. Zaldumbide would state that he wanted 32 vehicles at the end of the shift.

53. Mr. Eli Pelman, Mr. William Decker and Mr. Rodrigo Zaldumbide created a hostile working environment for service agents, including the plaintiff, because service agents under badges of slavery were compelled to do labor beyond human physical limitation with inducement of fear and the threat of employment termination. This treatment is like operating a machine that was designed to produce 4 widgets per hour at a rate of 10 widgets per hour. Operating the machine beyond its designed capacity may work for a short time; however, it is bound to fail. Demanding that the plaintiff produce work that is beyond human physical limitation is putting the plaintiff health at risk just as slaves.

54. The plaintiff has never been duly convicted of any crime to be treated in the manner in which he was treated by the defendant which violated the plaintiff's constitutional rights.

55. Mr. Eli Pelman and Mr. William Decker were terminated from employment with Vanguard Car Rental within one week after service of the original complaint, August 19, 2005.

56. The defendant has violated its own procedures in the disciplinary process. The disciplinary process is shown in Exhibit I, attached to the original complaint.

57. The plaintiff had to sign off that he received the associate handbook. The associate handbook established contractual rights between the plaintiff and the defendant which have been breached.

58. There are four steps in the corrective action process. The defendant complied with Steps II through IV; but, has failed to comply with Step I, Coaching Discussion. Step II can be reviewed at Exhibits 7 and 8 under Exhibit A, attached to the original complaint. Step III can be reviewed at Exhibit C, attached to the original complaint. In the writing discussions the defendant failed to give specific instructions on how to service four vehicles per hour to company standards. In fact, none of the written documentations specifically stated how to service four vehicles per hour to company standards and none specifically stated what the defendant had done to aid the plaintiff in improving his productivity. Step IV can be reviewed at Exhibit F, attached to the original complaint.

59. The definition of coaching pursuant to the Webster dictionary is to train intensively by instruction, demonstration, and practice. Coaching to service four vehicles per hour to company standards was never provided by the defendant and was never signed off by the

plaintiff. The defendant failed to instruct and demonstrate that four vehicles per hour can be serviced to company standards.

60. The defendant failed to acknowledge the improvement of the plaintiff regarding an idea that was presented and tested by the plaintiff on June 19, 2005 in which quantity and quality can be achieved.

61. The defendant on July 3, 2005 stated through Mr. Decker that efforts were made by the defendant and the plaintiff did not improve. Mr. Decker's statement contradicts the fact that the plaintiff was never trained to service four vehicles per hour to company standards. Mr. Decker's statement also contradicts the fact that he did not comply with the June 7, 2005 agreement to provide training demonstrating that four vehicles per hour can be serviced to company standards. Mr. Decker's statement also contradicts the fact that the plaintiff did improve as discussed above at paragraph 23.

62. The defendant through Ms. Burbage failed to instruct Mr. Decker to provide training after the plaintiff informed her that Mr. Decker did not provide the training pursuant to the June 7, 2005 agreement which was to demonstrate that four vehicles per hour can be serviced to company standards (see Exhibit C, attached to the original complaint).

63. The defendant failed to show that the plaintiff's low production of serviced vehicles is solely the fault of the plaintiff and not that of the

defendant considering the facts regarding the defendant's lose/lose operational system procedures for service agents based on badges of slavery, the customer service memorandum requiring quality at the highest level, Mr. Lobeck's expectation requiring quality service at the highest standards attainable (both legally and ethically) and the lack of providing proper training to meet the standard of four vehicles per hour serviced to company standards.

64. The plaintiff was never offered a severance package.

65. The defendant failed to establish just cause when the plaintiff was terminated on July 23, 2005.

66. Prior to February 28, 2003, the plaintiff under ANC (former parent company of ACR and NCR) was never reprimanded for vehicle production, was never compelled to service four vehicle per hour to company standards through badges of slavery, and was never suspended from work.

67. The badges of slavery began after February 28, 2003, under the defendant. It continued up to and including plaintiff's employment termination date, July 23, 2005 (see background discussion at page 2 under Exhibit A, attached to the original complaint).

68. The defendant still practices badges of slavery with existing service agents.

69. The plaintiff had no intentions of quitting his employment with the defendant

because he has ideas on how the defendant can save millions of dollars and generate billions.

70. The plaintiff submitted many multimillion dollar ideas to defendant's management on how millions could be saved by making simple changes in its operations. In fact, the plaintiff's idea submitted under Exhibit A, attached to the original complaint, has the potential to generate $1.44 billion for the defendant (see page 2 at Exhibit A, attached to the original complaint).

71. The defendant's conduct has caused the plaintiff tremendous mental stress: stress from its badges of slavery; stress from slashing the plaintiff's work hours by 41%; stress from terminating the plaintiff's employment without just cause and stress from preparing this suit.

72. The defendant puts making money over the safety of its customers. For example, service agents do not check tire pressures for each vehicle as does the plaintiff (see page 5 of Exhibit A, attached to the original complaint).

73. The defendant puts making money over the civil rights of its employees, including the plaintiff, by inflicting badges of slavery, although the plaintiff informed defendant's management of its intentional misconduct.

74. The plaintiff refused to compromise his integrity, which resulted in suspension from work, work hours being slashed by 41% and termination of employment without just cause.

75. As of September 3, 2006, the defendant still requires service agents to service vehicles for its customers with an emphasis on quality, not quantity. See attached Exhibits A, B, and C of the Amended Complaint. Exhibits A, B, and C are job postings for Service Agents in Oklahoma City (Oklahoma), Huntsville (Alabama), and Dallas (Texas). At no time did the job descriptions state how many vehicles per hour are required to be serviced. The job descriptions are identical to plaintiff's job description prior to his employment termination. Quality includes making sure vehicles are properly cleaned (all exterior and interior windows and mirrors, vacuum interior, floor, seats ashtray and trunk) and that safety equipment (lights, tires, brakes, wipers, horn, seat belts, mirrors and back-up lights) are in proper working condition.

76. As of December 19, 2006, the defendant still requires service agents to service vehicles for its customers with an emphasis on quality, not quantity. See attached Exhibit D of the Amended Complaint.

77. Between July 12, 2007 and August 2, 2007 the defendant advertised 9 jobs posting for service agents. The defendant still required service agents to service vehicles for its customers with an emphasis on quality, not quantity. The job postings are identical to the plaintiff's job description prior to his employment termination. The job postings at no time stated that service agents must be able to

service four vehicles per hour to company standards. See attached Exhibit A.

78. NCR has 21 locations in Florida and approximately 3,000 locations in the United States, Canada, Europe, Latin America, the Caribbean, Asian-Pacific, Africa and Australia. The NCR Fort Lauderdale International Airport location has the capacity to accommodate approximately 18 service agents; with 21 locations in Florida, it is estimated that there are 378 service agents in Florida and 9,450 service agents in the United States of America that are affected by defendant's badges of slavery.

COUNT I
Deliberate Indifference

79. The allegations set forth in paragraphs 1 through 78 are realleged and incorporated herein by reference.

80. The 5th Amendment to the United States Constitution provides in pertinent part that "no person shall be deprived of ...liberty....., without due process of law".

81. The 13th Amendment to the United States Constitution provides that "Neither slavery, nor involuntary servitude, except as a punishment for crime whereof the party have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction". The 13th Amendment to the United States Constitution also prohibits all badges and incidents of slavery.

82. The defendant through it managers acted with deliberate indifference violating the plaintiff's constitutional rights guaranteed by the 5th and 13th Amendment to the United States Constitution which was by motivated greed, retaliation and racial discrimination.

83. The defendant is liable to the plaintiff under 42 U.S.C. §1985(3) which states in part ...if two or more persons in any state or territory conspire ....for the purpose of depriving, either directly or indirectly, and person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, ...the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

84. The plaintiff informed defendant's management on several occasions about its intentional wrong doings and even offered solutions to the problems. Nonetheless, defendant's management showed its indifference by cutting plaintiff's work hours by 41%, demanding inhumane work to be done under badges of slavery which members of management could not do themselves nor provide proof that the work it expected could be done within the timeframe allotted, and eventually terminating the plaintiff in retaliation for standing up for his civil rights.

85. The defendant through it managers conspired to violate the civil rights of the plaintiff

and other service agents by focusing on making money through racial discrimination under badges of slavery and promising rewarding opportunities through a deceptional incentive pay program. New hire (employees) were not told up front that they must be able to service four vehicles per hour to company standards. The job postings shown in Exhibit's A, B, C and D (attached to the Amended Complaint) and attached Exhibit A for service agents has three "must" requirements which does not include the defendant's standard of four vehicles per hour serviced to company standards because such standard is a badge of slavery prohibited by the 13th Amendment to the U.S. Constitution.

86. Mr. Lobeck stated in his written presidential address to all employees that VCR is in compliance will all laws. His statement contradicts the fact that VCR employs racial discriminatory practices in violation of the 13th Amendment to the U.S. Constitution and 42 U.S.C.§1985(3).

87. The defendant exposed the plaintiff and other service agents to substantial risk of serious harm such as health risks including exhaustion, strokes, heart attacks and brain damage by demanding the plaintiff and others to work beyond their physical and human capabilities as slaves and robots.

88. Several service agents complained to the plaintiff about how they were being overworked to the point where they had lost interest in the incentive pay because the incentive

pay was not obtainable under defendant's operational procedures, which included badges of slavery.

89. The defendant failed to make a good faith effort to investigate the problems and fix them. Management at the highest level (Mr. William Lobeck) was informed about the problems; but, through deliberate indifference, did nothing other than terminate the plaintiff in retaliation.

90. The defendant's actions, orders, approvals, and omissions in violation 42 U.S.C.§1985(3) give rise to a cause of action for damages directly under the constitution.

COUNT II

Outrageous conduct

91. The allegations set forth in paragraphs 1 through 90 are realleged and incorporated herein by reference.

92. The defendant wantonly intended to terminate the employment of the plaintiff because the plaintiff would accept being treated as if he is a slave. The plaintiff was threatened with employment termination.

93. Plaintiff's work hours were reduced significantly.

94. Plaintiff was suspended and eventually terminated because he refused to allow the defendant to treat him as if he is a slave or cause him feelings of inferiority.

95. The defendant has shown no remorse regarding its policy for service agents after terminating the plaintiff without just cause; because, two years later, the defendant is still recruiting service agents without letting them know via the job posting that service agents must be able to service four vehicles per hour to company standards which is impossible to do within 15 minutes, unless quality is ignored which is not tolerated pursuant to defendant's quality assurance program.

96. The defendant's actions, orders, approvals, and omissions in violation of 42 U.S.C. 1985(3) give rise to a cause of action for damages directly under the constitution.

COUNT III
Breach of Contract

97. The allegations set forth in paragraphs 1 through 96 are realleged and incorporated herein by reference.

98. The defendant established a contract with the plaintiff via the Associate Handbook.

99. The defendant breached its contract with the plaintiff regarding disciplinary procedures. The defendant failed to comply with Step I of the corrective action process.

100. The defendant's actions, orders, approvals, and omissions in violation of 42 U.S.C. 1985(3) give rise to a cause of action for damages directly under the constitution.

COUNT IV
Conspiracy

101. The allegations set forth in paragraphs 1 through 100 are realleged and incorporated herein by reference.

102. The defendant through it managers conspired to violate the civil rights of the plaintiff and other service agents and still continues today to conspire by focusing on making money through racial discriminatory practices and promising rewarding opportunities through a deceptional incentive pay program. New hires (employees) were not told up front that they must be able to service four vehicles per hour to company standards. The job postings shown in attached Exhibit A for service agents has three "must" requirements which does not include the defendant's standard of four vehicles per hour serviced to company standards because it is a badge of slavery prohibit by the 13th Amendment to the U.S. Constitution.

103. With 99.9 percent of defendant's service agents being blacks, the conspiracy theory of maximizing profits through racial discrimination under the badges of slavery is a reality for the defendant because service agents including the plaintiff were compelled to produce four vehicles per hour to company standards while Hispanics were not held to the same oppressive standard.

104. The defendant's actions, orders, approvals, and omissions in violation of 42

U.S.C.§1985(3) give rise to a cause of action for damages directly under the constitution.

COUNT V
Wrongful Termination

105. The allegations set forth in paragraphs 1 through 104 are realleged and incorporated herein by reference.

106. The defendant did not provide the training necessary to show that service agents can service four vehicles per hour to yield 32 vehicles in an 8-hour shift and meet the quality standards expected of service agents. Also, the defendant did not follow its own procedure in the disciplinary process.

107. Plaintiff's employment termination was motivated by greed, malice, racial discrimination and other improper purposes.

108. The defendant's actions, orders, approvals, and omissions in violation of 42 U.S.C. 1985(3) give rise to a cause of action for damages directly under the constitution.

PRAYER FOR RELIEF

WHEREFORE plaintiff respectfully requests that the Court:

1. Permanently enjoin defendant from inflicting involuntary servitude upon service agents.

2. Permanently enjoin defendant from setting work standards without proper training.

3. Reasonable compensation to the plaintiff should the defendant implement any of his ideas.

4. Award plaintiff $1,036,152.00 for compensatory damages.

5. Award plaintiff costs.

6. Grant such other and further relief as the Court deems equitable and proper.

The plaintiff requests a trial by jury!

Respectfully submitted,

/s/ Lennon Anderson

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(2)

No. 09-146

Supreme Court, U.S.
SEP 3 2009
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

LENNON ANDERSON,

Petitioner,

v.

VANGUARD CAR RENTAL USA INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I. Whether Petitioner has presented compelling reasons to grant the Petition, where the Eleventh Circuit's *per curiam* Opinion affirming the District Court's dismissal with prejudice of Petitioner's civil action pursuant to Federal Rules of Civil Procedure 12(b)(6) does not conflict with a decision of this Court or a Court of Appeals, and does not amount to a departure from the accepted and usual course of judicial proceedings, as to call for an exercise of this Court's supervisory power.

II. Whether Petitioner has presented compelling reasons to grant the Petition, where the Eleventh Circuit's *per curiam* Opinion affirming the District Court's dismissal with prejudice of Petitioner's civil action pursuant to Federal Rules of Civil Procedure 12(b)(6) where the Eleventh Circuit's ruling does not implicate an important federal question that has not been settled by this Court.

CORPORATE DISCLOSURE STATEMENT PURSUANT TO SUPREME COURT RULE 29.6

Respondent, Vanguard Car Rental USA Inc., has no parent corporation and no publicly held company owns 10% or more of its stock.

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CONSTITIONAL PROVISIONS AND STATUTES INVOLVED IN THE CASE

Federal Rules of Civil Procedure, Rule 12(b)(6)

(b) How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(1) lack of subject-matter jurisdiction;

(2) lack of personal jurisdiction;

(3) improper venue;

(4) insufficient process;

(5) insufficient service of process;

(6) failure to state a claim upon which relief can be granted; and

(7) failure to join a party under Rule 19.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

42 U.S.C. § 1985(3)

(text of provision set forth in Petition for Writ of *Certiorari*)

Thirteenth Amendment

(text of provision set forth in Petition for Writ of *Certiorari*)

INTRODUCTION

Petitioner has presented no "compelling reasons" for his Petition for a Writ of *Certiorari* ("Petition") to be granted. *See* Sup. Ct. R. 10. Specifically, Petitioner fails to demonstrate that the Eleventh Circuit's December 23, 2008 Opinion ("Opinion") is in conflict with a decision of this Court or another Court of Appeals, that the Opinion is a departure from the accepted and usual course of judicial proceedings, or that the Eleventh Circuit decided an important federal question that has not been settled by this Court. *See* Sup. Ct. R. 10(a)-(c).

The subject of this Petition is the Opinion which affirmed the dismissal with prejudice of Petitioner's civil action against Respondent. The United States District Court for the Southern District of Florida, by Order dated February 29, 2008 ("District Court"), dismissed Petitioner's Second Amended Complaint with prejudice pursuant to Federal Rules of Civil Procedure 12(b)(6). Specifically, the District Court found that Petitioner failed to establish a *prima facie* claim in each of the two

remaining counts of the Second Amended Complaint.[1] The District Court's dismissal was with prejudice since Petitioner had been given two opportunities to amend his complaint in order to state a claim upon which relief could be granted, and the District Court found that further attempts to amend would be futile.

Petitioner appealed the dismissal with prejudice to the United States Court of Appeals for the Eleventh Circuit. The Eleventh Circuit Court of Appeals affirmed the District Court's dismissal. A subsequent Petition for Rehearing and Petition for Rehearing *En Banc* was denied *per curiam* by the Eleventh Circuit Court of Appeals.

At the outset, Petitioner contends that this writ should be granted to decide an important issue in job discrimination cases relating to an employer's ability to select criteria for employment decisions, and specifically relating to the legality of the performance standards set by Respondent. *Certiorari* should not be granted based on this argument, where if granted, the only issue properly before the Court is whether Petitioner's Second Amended Complaint was properly dismissed under Federal Rules of Civil Procedure 12(b)(6).

Petitioner next contends that Opinion affirming the District Court's dismissal with prejudice conflicts with decisions of the Eleventh Circuit. To the extent the decisions cited by Petitioner are even good law, and on point, they are not in conflict with the Opinion below.

---

1. Three counts of the Second Amended Complaint were voluntarily dismissed by Petitioner.

Petitioner's final contention, that the Eleventh Circuit's Opinion is a departure from the accepted course of judicial proceedings, is without support and without merit.

Simply put, Petitioner has failed completely to carry his burden of demonstrating that there are any compelling reasons for this Court to grant the Petition. Accordingly, the Petition should be denied.

COUNTER-STATEMENT OF THE CASE

Procedural History

The Petitioner filed this action on August 11, 2005 against Respondent in the United States District Court, Southern District of Florida. Pet.App. at 9-10. The original six-count Complaint essentially alleged that Petitioner, as an at-will, hourly employee of Respondent was a "slave." Specifically, Petitioner alleged in Counts I, II and IV that he was subjected to involuntary servitude pursuant to 18 U.S.C. § 1584, that he was discharged without just cause, also pursuant to 18 U.S.C. § 1584, and that he was subject to peonage pursuant to 42 U.S.C. § 1994, respectively. (Petitioner also brought additional State claims). Pet.App. at 9-10.

Respondent moved to dismiss the Complaint, and by Order dated January 5, 2006, the District Court granted Respondent's Motion to Dismiss without prejudice on the grounds that Petitioner had failed to state a federal cause of action. On January 5, 2006 the Clerk for the U.S. District Court, Southern District of Florida administratively closed this case. Between

January 5, 2006 and January 4, 2007 this case remained closed with no activity in the matter. Pet.App. at 10.

On January 4, 2007 Petitioner served an Amended Complaint on Respondent. The Amended Complaint had three (3) counts. Count I, entitled "Deliberate Indifference," claimed that Respondent was liable to Petitioner under 42 U.S.C. § 1985(3) for violations of his rights under the Fifth and Thirteenth Amendments to the Constitution. Counts II and III were RICO claims under Florida Statutes §§ 772.103(3) & (4) Pet.App. at 10.

On July 19, 2007, the District Court again dismissed Petitioner's Amended Complaint without prejudice as Petitioner failed to state a cause upon which relief could be granted.

On August 9, 2007, Plaintiff filed a five (5) count Second Amended Complaint. Pet.Brief, Appendix D. Count I, entitled "Deliberate Indifference," claimed that Respondent was liable to Petitioner under 42 U.S.C. § 1985(3) for violations of his rights under the Fifth and Thirteenth Amendments to the Constitution. Pet.App. at 43-46. Counts II thru V, headed "Outrageous Conduct," "Breach of Contract," "Conspiracy," and "Wrongful Termination," respectively, alleged state law claims and also sought damages under 42 U.S.C. § 1985(3). Pet.App. at 46-49. Petitioner subsequently voluntarily dismissed Counts II, III and V; and on or about February 29, 2008, the District Court Judge entered an Order Dismissing the balance of Petitioner's Second Amended Complaint with prejudice. Pet.Brief, Appendix C.

On February 29, 2008 Petitioner filed an appeal to the Court of Appeals for the Eleventh Circuit. The Eleventh Circuit's Opinion affirmed the District Court's dismissal with prejudice of Petitioner's civil action after Petitioner had, after three attempts, failed to assert a valid claim under the law. Pet.Brief, Appendix B. The Opinion also affirmed the District Court's finding that given the factual scenario presented by Petitioner, he would not be able to state a valid cause of action by further amending the Complaint, thereby dismissing the action with prejudice. Pet.App. at 7-8.

Facts Relevant to the Petition- District Court Order

The District Court's Order contains the legal and factual grounds upon which the Order is based. According to the District Court, Counts I and IV, both brought under 42 U.S.C. § 1985, were lacking of essential elements under that statutory scheme. Pet.App. at 13-20. The District Court stated the elements of a cause of action under Section 1985(3) as:

- A conspiracy,
- For the purpose of depriving a person or class of persons of the equal protection of the laws, and
- An act in furtherance of the conspiracy
- Whereby a person is deprived of any right or privilege of a citizen of the United States. Pet.App. at 13.

The District Court held that Petitioner had failed to satisfy the second element. The District Court stated that since 42 U.S.C. § 1985(3) creates no substantive rights itself, Petitioner must assert a deprivation of rights under a specific statute or constitutional provision. Pet.App. at 14.

The District Court considered Petitioner's attempts to satisfy this requirement by alleging that his Fifth and Thirteenth Amendments rights were denied. The District Court held that neither of these amendments could support a valid claim; stating that the Fifth Amendment applies to a state actor, not a private corporation; and that the Thirteenth Amendment could not be invoked without allegations of physical restraint, physical injury or the threat of such restraint or injury through law or the legal process. Coercion does not extend to cases like this where an employee merely asserts that his will to quit has been subdued, but where he still has a choice. Pet.App. at 13-17.

The District Court found Petitioner failed to state a claim on a different ground, as well. Petitioner failed to allege some racial or otherwise class-based, invidiously discriminatory animus behind Respondent's actions. Pet.App. at 17-19. The District Court dismissed the Second Amended Complaint on these grounds. The dismissal was with prejudice because the District Court did not believe that given the factual scenario presented that Petitioner would be able to state a valid cause of action. Pet.App. at 19-20.

Facts Relevant to the Petition – Eleventh Circuit Opinion

Petitioner appealed the dismissal with prejudice of his 42 U.S.C. § 1985(3) civil complaint. Pet.App. at 3. He argued on appeal that he had satisfied the pleading requirements for his claims. The Appellate Court, reviewed the District Court's grant of the motion to dismiss *de novo*, and accepted the factual allegations in the Second Amended Complaint as true. The Appellate Court held that Petitioner failed to state a claim based on two pleading deficiencies; one, he failed to allege any racial or other discriminatory animus behind Respondent's actions, and two, he failed to assert a valid claim under the Thirteenth Amendment. Pet.App. at 6-7.

With respect to the first deficiency, the Eleventh Circuit Opinion specifically considered the findings of the District Court, paying close attention to the Petitioner's allegations as to non-black comparators and Respondent's motives. Pet.App. at 6. The Appellate Court found no error in the District Court's analysis regarding the lack of racial animus alleged. *Id.* With respect to the second deficiency, the Eleventh Circuit Opinion considered Petitioner's argument that Respondent's work standards are a 'badge of slavery' but specifically found that Petitioner failed to allege that Respondent forced him to work. Pet.App. at 6-7. Thus, the Eleventh Circuit held that Respondent's work standards could not "be equated to an actual restraint on the liberty of black citizens that is in any sense comparable to the odious practice the Thirteenth Amendment was designed to eradicate." *Id.* Based on these findings, the Appellate Court affirmed the dismissal with prejudice of Petitioner's civil action.

REASONS FOR DENYING THE PETITION

The decision below does not amount to a departure from the accepted and usual course of judicial proceeding, it does not conflict with a decision of this Court or any Court of Appeals, nor does it implicate a federal question that has not been decided by this Court. Accordingly, Petitioner has not carried his burden of demonstrating any "compelling reasons" for the Petition to be granted. *See* Sup. Ct. R. 10.

I. *Petitioner is unable to allege facts sufficient to support claims based on 42 U.S.C. § 1985*

The District Court set forth the proper standard to be applied on a motion to dismiss: it accepted the well pled facts as true and construed the complaint in the light most favorable to Petitioner. *Scheuer v. Rhodes*, 94 S.Ct. 1683, 416 U.S. 232 (1974). The District Court also properly held Petitioner to a less stringent standard based upon his *pro se* status. *Trawinski v. United Tech.*, 313 F.3d 1295, 1297 (11th Cir. 2002). Even with this lowered standard, the District Court found the Second Amended Complaint deficient. Pet.App. at 11-12, 19-20. Likewise, the Eleventh Circuit in its Opinion, followed existing law and reviewed the District Court's grant of the motion to dismiss *de novo*, and accepted the factual allegations in the complaint as true and in the light most favorable to Petitioner. *D.P. ex. Rel.E.P. v. Sch. Bd. of Broward County*, 483 F.3d 725, 728 (11th Cir. 2007); *Shands Teaching Hosp. and Clinics, Inc. v. Beech Street Corp.*, 208 F.3d 1308 (11th Cir. 2000) (we review dismissal of a complaint for failure to state a claim *de novo*, construing all allegations as true and in the light most

favorable to the plaintiff). The Eleventh Circuit also recognized the less stringent standard to be applied to a *pro se* pleading. Pet.App. at 5.

Both the District Court, and the Eleventh Circuit applied the proper elements for a cause of a action under Section 1985(3):

> (1) a conspiracy; (2) for the purpose of depriving, either directly or indirectly, any person or class of person of the equal protection of the laws, or of equal privileges and immunities under the laws; and (3) an act in furtherance of the conspiracy; (4) whereby a person is either injured in his person or property or deprived of any right or privilege of a citizen of the United States.

Trawinski, 313 F.3d at 1299 (citation omitted). Both Courts also properly recognized that pursuant to the Eleventh Circuit holding in *Lucero v. Operation Rescue of Birmingham*, 954 F.2d 624, 628 (11th Cir. 1992), Petitioner was required to allege some racial, or otherwise class-based, invidiously discriminatory animus behind Respondent's actions in order to meet the second element of a cause of action under § 1985(3).

Applying the appropriate standards of review and substantive law, both the District Court and the Appellate Court correctly found that Petitioner failed to state a claim for civil conspiracy under 42 U.S.C. § 1985(3) based on two sound legal bases. First, Petitioner did not allege a deprivation of equal protection under the laws; and second, Petitioner did

not allege any racial or other discriminatory animus on the part of Respondent.

The District Court in its Order of Dismissal found that after three attempts Petitioner was yet to assert a valid claim under the law. Pet.App. at 19-20. The District Court further found that "it does not appear that given the factual scenario presented by Plaintiff, that Plaintiff is able to state a valid cause of action by amending the complaint, and thus Plaintiff's action is due to be dismissed with prejudice." *Id.* The District Court properly concluded that further amendment by Petitioner would be futile, thereby dismissing with prejudice. The Eleventh Circuit properly reviewed the denial of leave to amend for abuse of discretion, and found no abuse of discretion. *Garfield v. NDC Health Corp.*, 466 F.3d 1255, 1270 (11th Cir. 2001). Accordingly, the Eleventh Circuit properly affirmed the District Court's dismissal with prejudice pursuant to Federal Rules of Civil Procedure Rule 12(b)(6). Pet.App. at 8.

II. *The Eleventh Circuit Opinions cited by Petitioner have no impact on this case*

Petitioner contends that the Eleventh Circuit's *per curiam* Opinion conflicts with certain decisions of the Eleventh Circuit cited in his Brief. To the extent the decisions cited by Petitioner are even good law, and are on point, they are not in conflict with the Opinion below in this matter. Petitioner argues first that the Opinion below is not consistent with the decision in *Chapman v. AI Transport*, 229 F.3d 1012 (11th Cir. 2000). Pet.Brief, p.6. Petitioner's argument is unclear, but he appears to cite *Chapman* to bolster his claim that this Court must

accept his Petition to "decide some important issues... in job discrimination cases." Petitioner's reliance on *Chapman* is misplaced.

The plaintiff in *Chapman* brought an action for age discrimination and disability discrimination. The district court granted summary judgment in favor of the defendants on the age claims, and a jury returned a verdict in favor of the defendants after a trial on the disability claims. A panel of the Eleventh Circuit affirmed in part, and reversed in part. The Eleventh Circuit then granted a rehearing *en banc* to decide issues having to do with an employer's ability to use subjective criteria in employment decisions. The *Chapman* court determined that a subjective reason can constitute a legally sufficient, legitimate non-discriminatory reason for an employment decision. This is not inconsistent with the Opinion here, which turned solely on Petitioner's failure to state a claim, and as such has no bearing on Petitioner's writ.

The decision of *Wagner v. Daewoo Heavy Industries America Corp.*, 289 F.3d 1268 (11th Cir. 2002), cited by Petitioner, is equally inapposite where the panel's decision in that case has been vacated. *See Wagner v. Daewoo Heavy Industries America Corp.*, 298 F.3d 1228 (11th Cir. 2002).

The third decision cited by Petitioner is *Arnold v. Board of Education of Escambia County, Alabama*, 880 F.2d 305 (11th Cir. 1989). Petitioner argues an inconsistent result here, where the court in *Arnold* allowed several amendments to the complaint and discovery to be conducted. Pet.Brief, p.7. Here, Petitioner was given

several opportunities to amend his pleading before the District Court determined further amendment was futile. In any event, *Arnold* has been overruled, at least in part. *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163, 113 S.Ct. 1160, 122 L.Ed.2d 517 (1993).

III. *If granted, the only issue properly before this Court is whether Petitioner's claims were properly dismissed*

Petitioner contends that this writ should be granted to decide an important issue in job discrimination cases, to wit, "an employer's ability to select its own criteria for making employment decisions and with the permissibility of using subjective criteria." Pet.Brief, p.5. Stated differently, Petitioner contends the issue on this Petition is whether Respondent violated his constitutional rights when he was terminated for failing to meet Respondent's performance standards. Petitioner has misstated what issues properly would be before the Court if *certiorari* were granted. Even if Petitioner's writ were accepted, the only issue properly before this Court would be whether Petitioner's Second Amended Complaint was properly dismissed under Federal Rules of Civil Procedure 12(b)(6). The Opinion does not implicate an important question of federal law that has not been settled, and this case bears no impact for anyone other than the present litigants. For these reasons, the writ should be denied.

CONCLUSION

Petitioner has not established any compelling reasons for this Court to grant the Petition. Therefore, Respondent respectfully requests that the Petition be denied.

Respectfully submitted,

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IN THE

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LENNON ANDERSON,

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VANGUARD CAR RENTAL USA, INC.

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

REPLY BRIEF

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REVIEW OF THE ELEVENTH CIRCUIT'S DECISION IS NECESSARY TO RESOLVE A CONFLICT IN THE CIRCUIT AND BECAUSE THIS CASE IS ONE OF NATIONAL IMPORTANCE

Vanguard Car Rental has operations in all 50 states of the United States. Setting work standards that are beyond human physical capabilities and then discharging employees for not meeting those standards is of national importance.

The decision of the Eleventh Circuit conflicts with *Conley v. Gibson,* 355 U.S. 41, 45-46(1957). A motion to dismiss a complaint under Federal Rules of Civil Procedure 12(b)(6) should not be granted unless the moving party has met the burden of showing beyond doubt that the plaintiff can prove no set of facts. Of all the cases cited by the petitioner, *Conley* is the only case that the respondent did not address in its opposition brief. This fact raises the suspicion of doubt. Doubt is what the petitioner requested this Court to review and, interestingly enough, the respondent's brief did not address anything that it met the requirement that the petitioner can prove no set of facts beyond doubt.

CONCLUSION

Based on the foregoing, Petitioner respectfully requests this Court to grant his Petition for Writ of Certiorari.

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